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7 **UNITED STATES BANKRUPTCY COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **LOS ANGELES DIVISION**

10 In re
11 LAYFIELD & BARRETT, APC.,
12 Debtors.

Case No. 2:17-BK-19548-NB

Chapter 7

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF RANDAL RUPERT
IN SUPPORT OF CHAPTER 7
TRUSTEE'S OPPOSITION TO
ALLEGRETTI & COMPANY'S MOTION
FOR RELIEF OF ORDER APPROVING
TRUSTEE'S SALE OF REAL PROPERTY
ENTERED APRIL 5, 2019 [Doc 428]**

[Ref. Docket Nos. 419, 428, 660, 661]

Date: March 5, 2024
Time: 11:00 a.m.
Place: United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street
Courtroom 1545
Los Angeles, California
(or via Zoomgov per posted procedures)
Judge: Honorable Neil W. Bason

23 Richard M. Pachulski, the duly appointed and acting chapter 7 trustee of the bankruptcy
24 estate of Layfield & Barrett, APC, in support of his *Trustee's Opposition to Allegretti &*
25 *Company's Motion for Relief of Order Approving Trustee's Sale of Real Property Entered April 5,*
26 *2019 [Doc. 428]*, hereby submits his evidentiary objections to the Declaration of Randal Rupert
27 (the "Declarant"), filed in support of *Allegretti & Company's Motion for Relief of Order*
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Approving Trustee's Sale of Real Property Entered April 5, 2019 [Doc 428], filed by Allegretti & Company ("Allegretti"), and states as follows:

<u>Paragraph Number</u>	<u>Objectionable Statement</u>	<u>Evidentiary Objection</u>
¶5	<p>It is my understanding that the Parking Spaces associated with the Office Condos were assigned as follows based upon that document recorded in Summit County Utah Recorder as Recorder's Instrument Number 01030716 and recorded October 19, 2015 titled "Notice of Assignment of Limited Common Area" (the "<u>Notice</u>"), a true and correct copy of which is attached hereto as Exhibit "5."</p> <p>Suite 200, 4 stalls, Stall Numbers: 1, 2, 3, 35</p> <p>Suite 210, 2 stalls, Stall Numbers 39, 40</p> <p>Suite 220, 1 stall, Stall Number 41</p>	<p>Objection:</p> <p>Improper Expert Testimony (FRE 702). To the extent that the statement is intended as evidence of the legal entitlement of certain Suites to certain parking stalls, Declarant has not established that he is an attorney at law specializing in Utah property law or otherwise an expert as to any other applicable property law.</p> <p>Lack of Personal Knowledge (FRE 602). The foundation for the Declarant's statement that an assignment of specific stalls to specific suites (e.g., "Suite 210, 2 stalls, Stall Numbers 39, 40") as being "based upon th[e] ... 'Notice'" is not established, since the Notice does not contain any reference whatsoever to Suite numbers. The Declarant's personal knowledge in respect to this statement is not known.</p> <p>Best Evidence Rule (FRE 1004). To the extent the statement is not intended to opine on the legal effect of the referenced Notice and, instead, purports to summarize or set forth the contents of a portion of the Notice or another document, none of the exceptions to utilizing a document specified in FRE 1004(a) - (d) are established and the statement implies that the Suite and stall references are set forth in the Notice, which they are</p>

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		not. As such, the statement mischaracterizes or misstates the contents of a document. The Notice, which is attached as an exhibit, constitutes the best evidence of its contents such that any attempt to summarize its contents is inadmissible.
¶6	Further, the storage unit located at 2700 Homestead Road has its own unique tax identification number (TCVC-A-2AM) and did not have any parking spaces assigned to it.	<p>Objection:</p> <p>Improper Expert Testimony (FRE 702). To the extent that the statement is intended as evidence of the alleged lack of legal entitlement of the storage unit to any parking stalls, Declarant has not established that he is an attorney at law specializing in Utah property law or otherwise an expert as to any other applicable property law.</p> <p>Lack of Personal Knowledge (FRE 602). No foundation is established for the Declarant's personal knowledge, if any, regarding the tax identification number or the alleged absence of a parking space assignment for the storage unit.</p>
¶7	After receiving an initial inquiry from Allegretti's broker Garrett Houghton about the Office Condos, I sent him a response in which I attached a layout of the Office Condos and confirmed the Parking Spaces that were allocated to Suite 210 and 220. A true and correct copy of my email dated January 25, 2019 to Garrett Houghton is attached hereto as Exhibit "2.	<p>Objection:</p> <p>Inadmissible Hearsay (FRE 804(b)). The purported "initial inquiry" and the "layout" (which is not attached to the Motion) referenced in the statement constitutes inadmissible hearsay.</p> <p>Improper Expert Testimony (FRE 702). To the extent that the statement is intended as evidence of a purported allocation of parking spaces to Suites 210 and 220, Declarant has not established that he is an attorney at law</p>

<u>Paragraph Number</u>	<u>Objectionable Statement</u>	<u>Evidentiary Objection</u>
		<p>specializing in Utah property law or otherwise an expert as to any other applicable property law.</p> <p>Lack of Personal Knowledge (FRE 602). No foundation is established for the Declarant’s personal knowledge, if any, regarding the referenced “layout,” and basis for allegedly confirming how any parking stalls were “allocated.”</p> <p>Best Evidence Rule (FRE 1004). To the extent the statement purports to summarize or interpret the contents of the referenced email, it is inadmissible since the email is attached (as set forth in the statement) and constitutes the best evidence of its contents. Similarly, the various attachments referenced in the email are not attached, and the documents themselves constitute the best evidence of their contents, rather than their characterizations in the email.</p>
¶7[sic]	I received a copy of a letter sent by Pagay dated February 13, 2019 to the COA in which Pagay confirmed to the COA the allocation of parking spaces for the Office Condos consistent with the previously recorded Notice (Exhibit "6").	<p>Objection:</p> <p>Improper Expert Testimony (FRE 702). Declarant has not established that he is an attorney at law specializing in Utah property law or otherwise an expert as to any other applicable property law to opine on the contents of the referenced letter and whether such contents constitute an “allocation of parking spaces,” whether such “allocation” constitutes the transfer of a property right cognizable under Utah law, whether the contents of the letter constituted a “confirmation” of any “allocation,” and whether the contents of the letter are “consistent with the</p>

<u>Paragraph Number</u>	<u>Objectionable Statement</u>	<u>Evidentiary Objection</u>
		<p>previously recorded Notice (Exhibit “[sic, 5]).”</p> <p>Best Evidence Rule (FRE 1004). To the extent the statement purports to summarize or interpret the contents of the referenced letter, it is inadmissible since the email is attached (as Exhibit 6) and constitutes the best evidence of its contents.</p>
¶8	It is my understanding that Allegretti did not receive the allocated parking spaces when it purchased Suites 210 and 220, although based upon the relevant documents, it is my opinion that they should have.	<p>Objection:</p> <p>Improper Expert Testimony (FRE 702). Declarant has not established that he is an attorney at law specializing in Utah property law or otherwise an expert as to any other applicable property law to opine on whether Allegretti “should have” received “the allocated parking spaces when it purchased Suites 210 and 220.”</p> <p>Lack of Personal Knowledge (FRE 602) and Lack of Authentication (FRE 901). The Declarant does not specify which allegedly “relevant documents” form the basis for his improper expert opinion regarding how Allegretti “should have” received “allocated parking spaces” in connection with its purchase of Units 210 and 220.</p> <p>Best Evidence Rule (FRE 1004). To the extent the statement purports to characterize the allegedly “relevant documents,” the unspecified documents themselves are the best evidence of their contents.</p>
¶9	I was contacted by Joseph Allegretti in late 2023 that Allegretti had not received its allotted parking spaces.	Objection:

<u>Paragraph Number</u>	<u>Objectionable Statement</u>	<u>Evidentiary Objection</u>
		Inadmissible Hearsay (FRE 804(b)). Testimony regarding the contents of the unspecified communications in “late 2023” referenced in the statement constitute inadmissible hearsay.
¶10	I responded to Allegretti and copied Mr. Pagay that it was my understanding that the parking spaces were conveyed to Allegretti consistent with his February 13, 2019 letter. I was surprised to learn that the Parking Spaces were not conveyed.	Objection: Inadmissible Hearsay (FRE 804(b)). Testimony regarding the contents of the referenced response constitute inadmissible hearsay.

Dated: February 20, 2024

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Malhar S. Pagay

Malhar S. Pagay

Attorneys for

Richard M. Pachulski, Chapter 7 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10100 Santa Monica Boulevard, Suite 1300, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled: **EVIDENTIARY OBJECTIONS TO DECLARATION OF RANDAL RUPERT IN SUPPORT OF CHAPTER 7 TRUSTEE'S OPPOSITION TO ALLEGRETTI & COMPANY'S MOTION FOR RELIEF OF ORDER APPROVING TRUSTEE'S SALE OF REAL PROPERTY ENTERED APRIL 5, 2019** [Doc 428] will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* February 20, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* February 20, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Philip James Layfield
Register No. 71408-050
USP Tucson
U.S. Penitentiary Satellite Camp
P.O. Box 24549
Tucson, AZ 85734

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to

F.R.Civ.P. 5 and/or controlling LBR, on *(date)* February 20, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNIGHT MAIL

USBC, Central District of California
Attn: Honorable Neil W. Bason
Edward R. Roybal Federal Bldg. & Courthouse
255 East Temple Street, Suite 1552 / Courtroom 1545
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 20, 2023

Nancy Brown

/s/ Nancy Brown

Date

Printed Name

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Wesley H Avery wes@averytrustee.com, lucy@averytrustee.com;alexandria@averytrustee.com
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